

REMARKS

1. Claim Rejections -- 35 U.S.C. § 112

Claims 1 and 26 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicant has amended claims 1 and 26 to recite that the toner composition comprises at least one ingredient capable of balancing or hydrating the skin, which ingredient is mixed with *Morinda citrifolia* to comprise a cosmetic skin toner. Applicant submits that one of ordinary skill in the art would recognize that *Morinda citrifolia* may be combined with one or more toner ingredients, whether a balancing toner ingredient or a hydrating toner ingredient, to create a suitable cosmetic toner as taught in the present invention. The inclusion of various ingredients capable of balancing pH levels in the skin or for hydrating the skin are properly set forth and taught in the specification. Indeed, one skilled in the art will recognize the types of ingredients, even if not specifically stated in the specification, that may be used to formulate a cosmetic skin toner.

Claims 27 and 28 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, applicant has amended claims 27 and 28 to remove the phrase “a quantity” and to clarify what was originally meant by “balancing agent,” which language was amended to recite an ingredient capable of balancing pH levels in skin (claim 27) or an ingredient capable of hydrating the skin (claim 28). Applicant submits that these amendments are properly and adequately supported in the specification (see Specification pgs. 10-18, and 25-30) so as to render the claims definite and in a condition for allowance.

2. Claim Rejections – 35 U.S.C. § 103

Claims 1, 2, and 4-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent No. JP200095663A to Kondo in view of Moniz and United States Patent No. 5,472,699 to Duffy. Applicant submits that in light of the amendment to the claims as set forth above and the arguments presented below, neither Kondo nor Moniz, nor Duffy, either individually or collectively, render the claims of the present invention obvious.

In response, applicant has amended claims 1 and 25-28 to recite that the *Morinda citrifolia* is processed *Morinda citrifolia*, meaning that it does not exist in its raw, unprocessed state, but is instead transformed into a finished product. This amendment is properly supported in the specification and comprises no new matter. See Specification pgs. 18-21. The inclusion of a processed *Morinda citrifolia* fruit juice ingredient as taught by the present invention is not taught or suggested in Kondo.

Regarding the position of the Examiner that it would have been obvious to one of ordinary skill in the art that other parts of the *Morinda citrifolia* L. or Noni plant would inherently provide the same effects as that of the juice from the fruit, applicant submits that this position is flawed under the principles of obviousness. It is well documented, and experiments have proven, that different parts of the Indian Mulberry or *Morinda citrifolia* L. plant comprise different ingredients. See specification pg. 21-22. And, contrary to the Examiner's position, one ordinarily skilled in the art would recognize that different ingredients often perform different functions or have different effects. Thus, it cannot be said that the ingredients in the bark would inherently provide the same effects as the ingredients from the fruit as these ingredients are distinctly different. As such, the

example formulation taught in Kondo utilizing ingredients from the bark, cannot be said to teach or suggest the same effects as a similar formulation utilizing ingredients from the fruit, namely fruit juice. Moreover, the example formulation in Kondo cannot be said to teach or suggest the formulation of the present invention as it comprises processed *Morinda citrifolia*.

Applicant further submits that Kondo cannot be combined with either Moniz or Duffy to arrive at the claims of the present invention as amended. Moniz does not teach or suggest the application of a cosmetic skin toner comprising processed *Morinda citrifolia* combined with at least one ingredient capable of balancing pH levels in the skin or hydrating the skin. Moreover, one of ordinary skill in the art would not combine Kondo with Moniz to arrive at the claims of the present invention as neither of these references contain a suggestion to do so. The references are complete within themselves. A modification to the example formulation in Kondo with the processed *Morinda citrifolia* fruit juice of the present invention would materially alter the composition for its intended purpose. As such, these two references do not render obvious the claims of the present invention, as amended.

Each of the claims depending from the rejected base or independent claims place further limitations on what is otherwise argued allowable subject matter. Therefore, Applicant respectfully submits that these claims also stand in a condition for allowance.

Based on the foregoing, Applicant submits that the prior art does not render the claims of the present invention obvious, particularly as amended to recite more specific and definite limitations. As such, Applicant respectfully requests that the claims of the application be reconsidered and that the rejection under § 103 be withdrawn.

CONCLUSION

Based on the foregoing, Applicant respectfully submits that the deficiencies in the application have been corrected and that the proposed claims are not rendered obvious by the prior art references cited by the Examiner. As such, Applicant believes that the claims are now in a condition for allowance, and action to that end is respectfully requested.

If any impediments to the allowance of this application for patent remain after the above amendments and remarks are entered, the Examiner is invited to initiate a telephone conference with the undersigned attorney of record.

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Respectfully submitted,


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